IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.2 OF 1996

The State of Maharashtra] ... Appellant
(Orig.Complainant)

Vs.

Prakash Muktaji Sonawane] ... Respondent
Age 30 years. Occu. Nil] (Orig. Accused)
R/o. Murbad, Tal. Murbad,]
District Thane.]

Mr. A.S.Gadkari APP for the Appellant - State

Ms. Monika Sakhra;ni & Mr. Mihir Desai for Respondent No.1 - absent.

CORAM : S.K.Shah, J.
DATE : July 27, 2004.
-: ORAL JUDGMENT :-

1. The State has filed this appeal against the Order of acquittal, passed by the learned Judicial Magistrate, First Class, Murbad, whereby he acquitted the accused of the offence punishable under Sections 30(c) r/w 33(1)(c), 26(1)(f) r/w.42(1) of the Indian Forest Act.

2. Briefly stated the case of the prosecution is that on 6.6.1992, Range Forest Officer, the other forest officers working in Murbad Range and the Complainant Mr. Salunke, Forest Guard visited and inspected the protected forest land S. No. 271 at Murbad. They found that the accused had cleared and dug the forest land admeasuring 27.500 sq. metres, levelled it and constructed a house-cum- hut on that forest land. In construction of the house-cum-hut, the accused used illicit forest woods, 31 in number, the pieces of different kinds of trees like teak, injaili etc. The illicit woods used by the accused were 0.319 cubic metre in volume, worth Rs. 1199/-. That was done by the accused without prior permission of the forest department and by committing trespass over the protected forest and the accused damaged the protected forest to the tune of Rs.500/-. A panchanama of the spot was drawn and the complainant lodged complaint against the accused to the Court of Judicial Magistrate, First

Class, Murbad.

3. The learned Magistrate explained the particulars of the offence to the accused to which he pleaded not guilty and claimed to be tried.

4. His defence was that of false implication.

5. The evidence that was led before the learned Magistrate consists of the complainant Mr. Salunke, the Forest Guard, who was also the member of the inspecting party and PW 2, Mr. Thakare, panch witness for the spot panchanama.

6. The learned Magistrate held the evidence of these two witnesses to be reliable for the fact that the accused had levelled the land to the extent of 27.500 sq. metre from Survey No. 271 and constructed the house-cum- hut thereon by using teak and Injaili woods for the construction. The area of the hut was being described by panchanama at Exhibit 17.

7. The learned Magistrate, however, held that the complainant - Forest Guard has failed to establish that the land on which the hut was erected was forming part of the protected forest. In this respect, the learned

Magistrate held that what was produced before him was the Xerox copy of the certified copy of the Gazette. The learned Magistrate held that the Xerox copy was not admissible in evidence and, therefore, held that the complainant had failed to establish that the land on which the hut was constructed by the accused was protected forest. Consequently, the learned Magistrate held that no offence was established, therefore, acquitted the accused.

8. The learned APP tried to submit that it was a Xerox copy of the Certified Copy of the Gazette. The copy was certified by the Deputy Conservator of Forest, Thane Division, Thane. Therefore, the learned Magistrate should have relied upon the same. The Xerox copy indicates that it was a Government Gazette, dated 3rd August, 1905, Part-I and the Certificate issued by the Deputy Conservator of Forest, Thane, Forest Division, Thane to the effect that it was a certified extract of the Gazette with respect to the protected forest at village Murbad, Taluka Murbad, Division Thane.

9. What was produced before the learned Magistrate was the Xerox copy and not the certified copy. It was the Xerox copy of the Certified Copy, which was, obviously inadmissible in evidence to establish that the

land of S.No. 271 was a protected forest. The complainant ought to have produced the Certified Copy of the Gazette or should have produced the Gazette itself. Neither of these documents has been produced. The Xerox copy cannot be relied upon and admissible in evidence.

10. Under the circumstances, the view taken ;by the learned Magistrate cannot be said to be illegal or improper. Hence, I do not find any merit in the submissions made by the learned APP on behalf of the State. The Order of acquittal requires no interference. Consequently the Appeal deserves to be dismissed hence, the Order :-

ORDER

1. The appeal is dismissed.

[S.K.Shah, J.]

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CRIMINAL APPEAL NO. 2 OF 1996

Date of Decision : July 27, 2004.

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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